

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Manolo Gaud and Concepcion Gaud,)	C/A No.: 6:06-cv-3574-GRA-BHH
)	
Plaintiffs,)	ORDER
)	(Written Opinion)
v.)	
)	
Havana Tropical Café and Julio Torres,)	
)	
Defendants.)	
)	

This matter is before the Court for a review of the magistrate's Report and Recommendation filed on March 13, 2008 and made in accordance with 28 U.S.C. § 636(b)(1) and Local Rule 73.02(B)(2)(g). Plaintiffs brings this suit pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 206, 207 and the South Carolina Payment of Wages Act ("ACPWA"), S.C. Code § 41-10-40, for back wages owed by the defendants, who are *pro se*.

Procedural History

Plaintiffs filed this Motion for Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure. An order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), was issued by the magistrate on January 8, 2008. The defendants have filed no response or evidence with respect to the plaintiffs' motion for summary judgment. The magistrate recommends granting summary judgment for the plaintiffs and that judgment be entered against Defendant Julio Torres in the

amount of \$43, 296.00. Further, the magistrate recommends dismissing Defendant Havana Tropical Café, without prejudice, based on Plaintiffs' admission that this defendant is immune from any debt collection at this time.

Standards of Review

Summary judgment is appropriate if "there is no genuine issue as to any material fact . . . and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Bailey v. Blue Cross & Blue Shield*, 67 F.3d 53, 56 (4th Cir. 1995). All doubts must be resolved and inferences drawn in favor of the nonmoving party. See *Yarnevic v. Brink's, Inc.*, 102 F.3d 753, 756 (4th Cir. 1996). In this case, the magistrate's Report and Recommendation draws all inferences in favor of the Plaintiff.

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

In order for objections to be considered by a United States District Judge, the objections must be timely filed and must specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. Fed.

R. Civ. P. 72(b); see *United States v. Schronce*, 727 F.2d 91,94 n.4 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841, 845-47 nn.1-3 (4th Cir. 1985). "Courts have . . . held *de novo* review to be unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendation." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Furthermore, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983). No objections to the Report and Recommendation were filed.

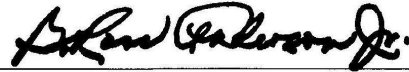
Conclusion

After a review of the magistrate's Report and Recommendation, applicable case law, and the record, this Court finds that the magistrate applied sound legal principles to the facts of this case. Therefore, this Court adopts the Report and Recommendation in its entirety.

IT IS THEREFORE SO ORDERED THAT the plaintiffs Motion for Summary Judgment be GRANTED and JUDGMENT be entered against Defendant Julio Torres in the amount of \$43, 296.00.

IT IS FURTHER ORDERED THAT Defendant Havana Tropical Café be DISMISSED, *without prejudice*.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

April 10, 2008
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, Defendants have the right to appeal this Order within sixty (60) days from the date of its entry. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, **will waive the right to appeal.**